IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.12984 of 2007
Date of decision: 27.11.2009

State of Haryana ....Petitioner

versus

Ram Pal Singh (deceased) through his L.R. and another
...Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. D.S.Nalwa, Additional Advocate General, Haryana, for the petitioner.

Mr. Narender Hooda, Advocate, for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether the judgment should be reported in the digest ?

K.Kannan, J. *(Oral)*

1. The award under challenge is a direction for entitlement of full back wages from the date of demand notice dated 02.11.1995. The enquiry had been constituted against the workman, who was Conductor in Haryana Roadways and in pursuance of the finding of proof of misconduct, the workman was dismissed from service. On a challenge by the workman before the Labour Court on a reference sought by him, the Labour Court had already passed an order on 18.08.2000 on preliminary issue relating to the fairness and propriety of enquiry that the enquiry was not fair and proper. Even subsequent to this order, the management

had not availed of any opportunity to prove the misconduct and rest contended with production of the enquiry file through a Clerk of the Haryana Roadways department. The Labour Court, under the circumstances, held that if the enquiry was not fair and proper and if there had been no evidence adduced by the management to prove the misconduct, the inevitable consequence was that the termination was bad in law. Since the workman had died during the course of proceedings before the Labour Court, the proceedings were continued only at the instance of the legal representatives and the Labour Court had awarded full back wages from the date of the demand notice dated 02.11.1995 with consequential benefits.

2. The learned counsel appearing for the management, Shri Nalwa contends that there was no proof of the fact that the workman was not otherwise gainfully employed and the Court ought not to have granted full back wages. In a case where the workman had died and the claim was prosecuted only at the instance of the legal representatives, I do not think it is a fit case for fresh examination of witness with reference gainful employment. The award granted by the Labour Court providing for full back wages from the date of demand is sustained and the wages shall be computed upto the date of his (workman's) death or the date when he was due for superannuation whichever is earlier. Subject to this modification, the writ petition is dismissed. No costs.

(K.KANNAN)
JUDGE

27.11.2009
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